

**“PROTECTING PUBLIC HEALTH & THE ENVIRONMENT  
THROUGH INNOVATIVE APPROACHES TO COMPLIANCE”**

**Executive Summary of the  
East and West Coast Conferences**

**Conferences held on January 26, 1999 & February 3, 1999  
& Co-Sponsored by  
the U.S. Environmental Protection Agency  
& the National Partnership for Reinventing Government**

**“PROTECTING PUBLIC HEALTH & THE ENVIRONMENT  
THROUGH INNOVATIVE APPROACHES TO COMPLIANCE”**

**Executive Summary**

**TABLE OF CONTENTS**

	<u>Page Number</u>
I. Introduction	1
II. Format of Conference and Report	2
III. East Coast Conference	
A. Highlights of Comments from Plenary Roundtable	3
B. Highlights from Compliance Assistance Sessions	6
C. Highlights from Compliance Incentive Sessions	9
D. Highlights from Information and Accountability Sessions	11
E. Highlights from Sessions on Innovative Enforcement Approaches	14
IV. West Coast Conference	
A. Highlights of Comments from Plenary Roundtable	17
B. Highlights from Compliance Assistance Sessions	20
C. Highlights from Compliance Incentive Sessions	23
D. Highlights from Information and Accountability Sessions	25
E. Highlights from Sessions on Innovative Enforcement Approaches	27

**“PROTECTING PUBLIC HEALTH & THE ENVIRONMENT  
THROUGH INNOVATIVE APPROACHES TO COMPLIANCE”**

**Executive Summary of the East and West Coast Conferences**

**I. INTRODUCTION**

This document serves as an executive summary for two conferences, each of which was entitled, “Protecting Public Health and the Environment through Innovative Approaches to Compliance.” These conferences were co-sponsored by the U.S. Environmental Protection Agency (EPA) and Vice President Gore’s National Partnership for Reinventing Government (NPR). The first conference was held on January 26, 1999 in Washington D.C. and the second occurred on February 3, 1999 in San Francisco, California.

Why were these conferences held? Five years ago, EPA reorganized its compliance programs. This reorganization was undertaken by Administrator Browner with a goal of making EPA’s enforcement and compliance programs more effective in protecting public health and the environment. The purpose of these conferences was to discuss the actions we have taken over the past five years and solicit ideas from a variety of different stakeholders on how we can further improve public health and the environment through compliance efforts. Participants in the conferences included environmental and community groups, trade associations, small and large business representatives, academics, and federal, state, local and tribal representatives.

These conference attendees participated in breakout sessions addressing the topics of: 1) compliance assistance; 2) compliance incentives; 3) information and accountability; and 4) innovative enforcement approaches. EPA was not seeking consensus on how the Agency should proceed in these areas, but instead was interested in individual viewpoints from the different stakeholders participating in the conference.

The suggestions made at the conferences are highlighted in this executive summary and will be taken into consideration as EPA continues to work with its state, tribal and local partners in ensuring compliance with the Nation’s environmental laws. EPA’s Office of Enforcement and Compliance Assurance (OECA) will continue to seek input from different stakeholders on significant compliance and enforcement issues. During the first week of March, 1999, OECA published a Federal Register (FR) Notice with the list of the questions of focus at the east and west coast conferences. The purpose of the FR Notice is to solicit input on these questions from all interested parties, with the goal of continuing to strengthen the Nation’s environmental compliance assurance program. Upon receipt and consideration of all the comments offered, including those shared at the two conferences as well as those submitted in response to the FR Notice, OECA plans to issue a report summarizing the comments received and actions it intends to take in response.

Over the past five years, EPA has already undertaken some major initiatives to reinvent its compliance programs. In order to share information on some of these initiatives with the general public, OECA also published a booklet entitled, “Protecting Your Health and the Environment Through Innovative Approaches to Compliance – Highlights from the Past 5 Years.” This booklet was distributed at the conferences and is available through the OECA web site at <http://www.epa.gov/oeca/polguid/oeca5sum.html> or you can obtain a copy beginning in late March by contacting EPA’s Enforcement and Compliance Docket and Information Center at 202-564-2614 or 202-564-2119.

## **II. FORMAT OF CONFERENCE AND REPORT**

The agenda for the west coast conference is provided in attachment 1; the substance and format was the same for the east coast conference. Opening remarks were made by Steven Herman, Assistant Administrator for EPA’s Office of Enforcement and Compliance Assurance (OECA), and a representative from the National Partnership for Reinventing Government (NPR). Morley Winograd, Director of the NPR, participated in the east coast conference and Bob Stone of NPR participated in the west coast conference. Bill Ross of Ross & Associates served as facilitator for the morning session at both conferences.

The opening remarks were followed by a presentation by Sylvia Lowrance, Principal Deputy Assistant Administrator, OECA, on “Innovative Approaches to Ensuring Compliance.”

After the initial presentations, each conference had two major segments. A panel of people kicked off discussions in a plenary roundtable discussion. This was followed in the afternoon by smaller group discussions, for all attendees, each focusing on specific questions and issues involving EPA’s compliance efforts over the past five years. There were four breakout sessions in the afternoon and each session was repeated twice, allowing conference attendees to participate in two sessions each. The four breakout sessions addressed the topics of: 1) compliance assistance; 2) compliance incentives; 3) information and accountability; and 4) innovative enforcement approaches. The majority of conference attendees received the background papers for the sessions in which they were participating prior to the conference.

This report provides “highlights” and a summary of the comments made during the plenary sessions, as well as during each of the four breakout sessions. Providing “highlights” was an appropriate approach given that EPA was not seeking consensus on how the Agency should proceed in these areas, but instead was interested in individual viewpoints from the different stakeholders participating in the conference. This report first provides highlights from the east coast conference, followed by the summary for the west coast conference. EPA is providing all of this information in the interest of sharing the detailed feedback received by the Agency.

EPA is grateful to the conference participants for their time and suggestions.

### **III. EAST COAST CONFERENCE**

#### **A. HIGHLIGHTS OF COMMENTS FROM PLENARY ROUNDTABLE**

These highlights are presented **using the words of the plenary roundtable participants**, and under headings which reflect the focus of their comment(s).

##### Resources

- C State capacity should be built. State/federal budget makers only hear from a small segment of the public, but generally only from industry. There is chronic under-enforcement and chronic under-staffing. The regulated community and trade associations should push for enforcement resources. Resources specific to enforcement are important.
- C Resources for general infrastructure improvements are an issue as well as those for enforcement and compliance.

##### Accessibility and Analysis of Compliance Data

- C States don't have accessible information regarding the state of compliance and this needs to be changed. For example, states could prepare detailed annual environmental reports, like the one being produced in Maryland. Reports of this sort need to be completed by each state.
- C There needs to be accurate analysis of compliance data for it to be meaningful.

##### Identification of Root Cause of Compliance Problems

- C Industry may not always agree with EPA's characterization of significant noncompliance. When EPA talks about widespread violations within a sector, they should question whether or not the violation is a result of regulatory complexity. One way to do this would be to look across all media to determine if a pattern of violations exist or if the violations are concentrated in a particular requirement within one media.
- C The root cause of non-compliance needs to be investigated.
- C There needs to be improved record keeping to understand the root cause of problems. The resulting data should be fed into the regulatory and pollution prevention programs to improve their effectiveness.

### Regulations

- C EPA should simplify regulations while increasing emphasis on toxics use reduction and pollution prevention as a complement to chemical-by-chemical management.
- C The rules have gotten very complex and engineers, not lawyers, run plants and try to comply with rules that even lawyers can't agree on.
- C The regulations are complicated, but that needs to be debated on Capitol Hill in reauthorizing the laws. Until this happens, EPA should not stop enforcing the laws.

### Improved Manufacturing Technologies

- C As the largest consumer for technology, the US government should encourage deployment of improved manufacturing technologies through incentives.

### Enforcement

- C The country needs rigorous environmental enforcement, which is predictable, fair and unavoidable.
- C With regard to enforcement, permits are often written in such vague terms, they're unenforceable. The enforcement program needs to continue to work closely with federal and state permitting officials.
- C There should be expanded public involvement in enforcement.
- C It is important for EPA and state governments to remember that only government can apply the enforcement tool.

### Involving the Public in Decision Making and Access to Data

- C The public has the right to know what facilities are in and out of compliance. In addition, as EPA and the states make decisions, we need to involve impacted communities and environmental justice communities, in a meaningful way, in the decision making process. Many issues get settled by making data available in the public arena.

### State Activities

- C We are not in a "one size fits all" situation. States believe in enforcement, but need the flexibility to use the different tools and need pressure from the federal government when they are not effective.

### Obtaining Input of Prosecutors

- C EPA is urged to look toward prosecutors as remedies are fashioned. As EPA is designing compliance programs, systems should be streamlined to be made easier and EPA should look to federal and state prosecutors for input on addressing the segment of the regulated community that does not intend to comply with environmental laws.

### PPA/PPG Program

- C EPA should improve its performance partnership agreement/performance partnership grant program to make it a unified system.

### Local Governments

- C We should increase the ability of local governments to enforce. There are approximately 18,000 local governments with no enforcement authorities. We need administrative and statutory changes to allow those closer to the issues to become involved.

### Role of Federal Government

- C Delegating more to the states is the way to go. The federal government can do better in providing training and targeting assistance, and in providing more effective oversight of state programs to ensure proper implementation. Targeting by the federal government should focus on larger, multi-state violators and when appropriate, should be done in concert with the states.
- C It is important for EPA and state governments to remember that only government can apply the enforcement tool.

### Toolbox

- C Compliance assistance, compliance monitoring, compliance incentives and enforcement are generally agreed to be the tools in the “toolbox.”
- C Adding tools to the toolbox doesn’t always answer the problem. There is agreement that there are definitely compliance problems but disagreement as to the cause of these problems. EPA needs to look at the root cause of the problem first.
- C The terms “compliance incentives” and “voluntary compliance” are oxymorons. Businesses are supposed to comply and should not need incentives to do so.

- C Incentives should never take the place of sanctions. What used to be the floor is now the ceiling.
- C A toolbox is useful, but which tools are used is what is important. At the state level, letting companies know that help is available does not get their attention the way an enforcement action does. Companies which are in violation should be brought in for enforcement and then we can use the toolbox.

## **B. HIGHLIGHTS FROM COMPLIANCE ASSISTANCE SESSIONS**

The following are highlights and a summary of comments provided during the first and second compliance assistance breakout sessions.

### Format, Content, and Timing of Compliance Assistance Tools

- C When EPA completes compliance assistance tools and provides copies to the states, EPA should provide both an unbound copy and an electronic version so that interested states can modify the documents to add state requirements so the documents cover both federal and state requirements.
- C When providing compliance assistance materials, EPA needs to make an effort to explain how taking certain steps will affect the business' "bottom line" in a positive way. "The best tool to provide is an understanding of what is being required of them, a relationship between the bottom line of compliance and the business' bottom line." You have to make the business person understand that it's a business decision. Teach them what to do to lower costs and comply.
- C Every new rule should be accompanied by a compliance guide or compliance checklist which explains what you need to do to comply. This checklist should be issued at the same time as each final rule.
- C Wherever possible, guidance should be multi-media for small businesses.
- C Compliance assistance must be clear, simple and straightforward and provided in writing. Small businesses do not have time to read complicated and lengthy guides.
- C Attaching the small business policy to the back of a notice of violation is not an effective approach. Instead, attach a sector-specific compliance checklist so the small business knows what they have to do in order to come into compliance.

### Rules and Regulations



- C Rules need to be written in plain language and must be simple and easy to understand.
- C Every new rule should be accompanied by a compliance guide or compliance checklist which explains what you need to do to comply. This checklist should be issued at the same time as each final rule.

#### Small Business Policy

- C With regard to the Small Business Policy, the policy still contains a penalty provision, which frightens small businesses. EPA should revisit the policy.

#### Delivery of Compliance Assistance

- C Small businesses are not comfortable obtaining information from regulators. EPA should distribute documents to other assistance providers who can pass them onto small businesses.
- C EPA should provide compliance assistance materials **at places where small businesses have to go.** For example, provide compliance assistance materials where a small business obtains their business license. A lot of small businesses do not use the Internet. EPA needs a much more proactive delivery system which involves providing compliance assistance materials at places where small businesses must frequent due to their business.
- C Associations are major channels of information delivery. Distribute compliance assistance materials to organizations which deal with small businesses who can pass on these materials.
- C EPA should establish a central clearinghouse for compliance assistance materials.
- C EPA should coordinate with other federal agencies (e.g. OSHA) in the provision of compliance assistance. Small businesses see “government” overall and do not distinguish between federal agencies.
- C EPA should send letters saying “you have environmental responsibilities and here’s a help line that you can call” for assistance. “As long as you keep a hammer you will drive compliance, but you must give people a place to go” for information. When EPA distributes such letters, they should let the states know ahead of time.

#### Interface at State and Local Level

- C The frame of reference for a lot of small businesses is the local level. This is where

they go to obtain local permits. EPA needs to double their outreach at the local level because local government has the best interface with the local community. The local agencies should focus on one-on-one assistance. At the same time, EPA cannot rely solely on the local level given the myriad of federal, state and local requirements, level of knowledge, and resources. Also, we need intra-agency training so that government employees know the correct offices to which to refer people.

- C Others voiced the opinion that the key interface is at the state level and the key approach for small businesses is compliance assistance given the limited likelihood of compliance monitoring and enforcement being able to reach all small businesses. It was recommended that the Agency support and reward 507 small business assistance programs (through rewards such as emissions reductions credits).
- C Others voiced the opinion that relative roles cannot be thought out at the national level, but need to be designed at the state and local level.

#### Coordination with Local Economic Development Authorities

- C EPA should work with local economic development authorities and local planning authorities up front as small businesses get established in order to positively influence their compliance status.

#### Financial Assistance

- C Finances often influence the ability of small businesses to comply. Revolving loans, financial assistance programs, I & M programs, sometimes have to substitute for information if you want compliance by small businesses.

#### Enforcement for Those Who Do Not Comply

- C No matter how much education is carried out, there will still be some individuals who do not comply. For this reason, we need both the threat of and actual enforcement. From the prosecutor's perspective, it's valuable to have a business sign a receipt for compliance assistance materials when they receive them. The tools of compliance assistance and enforcement must work together in a rationale way.

#### Publicize Enforcement Actions

- C EPA should continue to publicize enforcement actions. They get peoples' attention.

### Analysis of Impact of Compliance Assistance Tools

- C EPA should track who receives compliance assistance tools and who does not and analyze whether or not the individuals who receive the tools have a better compliance rate.
- C EPA should analyze whether the right tools are being used for specific compliance problems.

### Peer Matching Program

- C Small businesses learn by examples from peers. They learn from others how to come into compliance. “Peer matching programs” for small community drinking water systems work and would also be effective with Tribes and others.

### Grant Funding for Alternative Compliance Programs

- C To the extent possible, make more grant money available to pilot alternative compliance programs.

## **C. HIGHLIGHTS FROM COMPLIANCE INCENTIVE SESSIONS**

This section contains highlights of the comments from participants in both the first and second sessions of the compliance incentive breakout discussions.

### Rewards, Recognition or Other Special Treatment for Top Performers

- C Most of the participants believed that a top performer program in some form was a good idea.
- C However, several individuals expressed the concern that these programs can be a large drain on resources, and given the high level of noncompliance that resources would be better spent on lowering the noncompliance rate.
- C The term “performance incentives” was preferred over “compliance incentives” by some participants.

### Definition of Top Performer

- C Participants differed in their views as to who falls into the top performer category and the definition of a “top performer.” Some emphasized that top performer status should be reserved for those who achieve full compliance at a minimum. Others argued that since full compliance is virtually impossible for some industries to achieve, full compliance should not be a prerequisite for top performer status.
- C Several participants indicated that criteria other than compliance should also be

considered, such as: overall environmental leadership, improvements in environmental performance, and accomplishments in pollution prevention.

### Incentives

- C With regard to incentives, the participants stated that the best incentives were those that would positively impact the “bottom line”. Several individuals stated that public recognition is important for those companies that market directly to the public. Some participants believed that the nature of the incentives should be negotiated between the company and the state.
- C A number of participants referred EPA to the OSHA Voluntary Protection Program (also known as the OSHA Star Program) as a model for an environmental top performers program.
- C It was also suggested that top performer programs include a “mentoring” component, which requires participants to mentor other facilities which need assistance.

### Influences and Motivators to Improve Compliance & Overall Environmental Performance

- C Several participants noted that it was a given that inspections, field presence and enforcement actions led to increased compliance and that EPA did not need to study this issue to determine that this was the case.
- C A number of factors were cited as influences and motivators for companies to comply, including the following:
  - sunshine and accountability;
  - fear;
  - greed;
  - access to information and outreach programs; and
  - enforcement actions.
- C Some of the actions suggested for government to motivate compliance included the following:
  - One state discussed a state program which allowed first-time offenders to get a percentage of their fine suspended if they were without violations for a given number of years.
  - Financial assistance for municipalities due to large infrastructure costs.
  - Increased inspection field presence and enforcement.
  - Actions that immediately affect the bottom line, such as a sewer hookup

moratorium.

- Greater free exchange of information with regulated entities so that companies can seek advice from regulators without fear of repercussions.

#### Audit Policy

- C Many participants expressed support for the policy as it is currently being implemented, while others suggested that it isn't used widely enough.
- C Some had specific suggestions for how the Agency can be more effective in this area, including:
  - extending the benefits of the audit policy to those who disclose without having an audit program in place;
  - focusing not on whether a facility disclosed a violation but instead on whether the violation was ultimately corrected;
  - scrutinizing state audit privilege and immunity laws more closely.

#### **D. HIGHLIGHTS FROM INFORMATION AND ACCOUNTABILITY SESSIONS**

The following are highlights of comments provided during the first and second sessions on information and accountability.

#### Need for consistent definitions

- C We need to get back to basics, develop consistent, simple definitions of data across programs, and define the questions we need to answer before deciding what data to collect.
- C There is a need for a common definition of a "compliance rate."
- C We need to establish a "baseline of data" that is understandable and communicated broadly.

#### Data from the States

- C States must be held more accountable through their state partnership agreements for poor quality data and erroneous assessments.

- C State grants should be tied to data quality. EPA's commitment to data quality has to be enforced with the Regions and states.
- C Accountability for data needs to go to the inspector level, to the individual collecting the data and putting it in the data system.

#### Availability and Presentation of Data to the Public

- C EPA needs to identify which violations are most important from the standpoint of communicating data to the public.
- C EPA needs to address the issue of "how does it affect me" and present data on a whole facility basis, rather than a media-specific basis. We need to be able to answer questions as they affect the individual (e.g. is my water safe to drink?).
- C Information needs to be put in context and should communicate whether or not there is a significant impact on health and the environment. We need to watch our use of abstract terminology to make information more understandable.
- C The public wants to know about the track record of the facility "in my back yard" and the cumulative impact on my community from discharges and emissions.
- C There is a tendency of government agencies to develop and provide data on easy targets rather than developing the most meaningful data.
- C Data presentation should be linked to priorities.
- C EPA and the states need to be more forthcoming with their data. We need more transparency. Absence of information can harm communities. We need to make information accessible to the public.
- C Neutral performance data is useful even if it is not interpreted. It's important to have the ability to "mine" the data for many possible uses.
- C Knowing how facilities compare to like facilities is important.
- C Too much information is going on web sites for the sake of having it there. We need a clear goal and process for what information should be available and how it should be made available.
- C EPA need to think about delivery systems for its data beyond web sites (e.g. mailing lists).

#### Data Quality

- C The most important aspects of data quality are:
  - accuracy
  - currency
  - completeness.
- C We need a complete picture of activities on a site-specific basis.
- C Proper context for the information needs to be provided. There is a need to know whether or not violations are significant in terms of impact on health and the environment.

#### Use of Data

- C We need to use the data more so that it encourages a dialogue on the data and a feedback loop is established. Some of the data may be wrong, but “we won’t know until we see it.”
- C As the public sees the data and becomes accustomed to using it, they develop a context for it themselves.

#### Data Collection

- C EPA tends to focus on central collection of data (as in TRI) when there is another model available, that of AIR NOW. In that model, EPA pulls data from local data sources, but only when that local source has been determined to have developed quality data.
- C SIC codes should be identified so that trends in industrial performance can be identified. We need trends assessments over the long term.

#### Data Correction

- C When information is found to be incorrect, it must be corrected quickly and the correction publicized in the same way that the original data was publicized.
- C Having a feedback loop on data correction is important.

### **E. HIGHLIGHTS FROM SESSIONS ON INNOVATIVE ENFORCEMENT APPROACHES**

The following are highlights of comments provided during the first and second sessions on

innovative approaches to enforcement.

#### Enforcement Policy

- C It is imperative to have clear guidance on enforcement policy and to offer the kinds of incentive programs that the Agency is starting to develop.

#### Targeting those Outside the System

- C Significant time is spent on inspections of those already in the system, there needs to be emphasis on targeting those outside the system (e.g. non-reporters).

#### Utilizing Community Groups

- C EPA needs to find a better mechanism on getting compliance information to public groups and local governments.
- C Community groups have good ideas about compliance problems in their geographical areas and EPA should solicit information from these groups to help identify violators outside the system.

#### 1-800 Hotline Number

- C 1-800 Hotline numbers may help as a mechanism for citizens to report potential violators.
- C It was suggested that such hotlines be staffed by individuals with general levels of training who can then redirect calls to the appropriate person with the detailed knowledge to adequately answer a specific question.

#### Citizen Suits

- C There should be an expansion of enforcement actions through citizen suits.
- C Some of the states' audit policies have made it more difficult for citizens groups to bring citizen actions.

#### Publicizing Enforcement Actions & the Implications

- C Advertising environmental problems and violations can be a great deterrent to future violations and is an under-utilized tool.



- C Some conference participants expressed concerns about violations of small businesses being publicized without the business having the opportunity to comment on or explain the data which is published.
- C Others suggested that it is not unreasonable to publish information about corporations that are out of compliance for several years, however there should be more information available to clarify what the compliance figures mean and to explain phrases such as “significant noncompliance.”

#### Allowing Time for Outreach and Training

- C Education is the key to reducing non-compliance by small businesses.
- C EPA should help small business trade associations understand what needs to be done to prevent non-compliance (i.e. “here are the 20 specific things to do”), so that trade associations can pass on clear guidance to their members.
- C The root cause of small business’ non-compliance is lack of information and understanding without teams of attorneys.
- C The requirements associated with the recent Underground Storage Tank (UST) December 1998 deadline are an example of a situation where the rule was announced several years before industry need to comply. This provided sufficient time for the states to conduct outreach and training.

#### Definition of Compliance and Measuring Success with Sound Data

- C The definition of compliance is not clear. Federal and state enforcers need to determine the key measures of success so that we can judge whether we are doing a good, bad or indifferent job. Without consistent measurements, we cannot identify our successes and areas of weakness.
- C It is imperative to ensure that we are operating on correct data as move toward data driven and outcome based enforcement.
- C The idea was raised of assigning a compliance status to individual companies similar to having an environmental report card, by tracking the company’s regulatory history and using that as an objective measure.

#### Tradeoff of Specific Regulations versus Flexibility

- C EPA needs to write clearer and more concise regulations. This is an effective approach to dealing with creative court challenges.

- C Some representatives of the regulated community may encourage the EPA to incorporate flexibility into rules, but the trade-off from such flexibility is increased potential liability because EPA must address violations on a case by case basis.

#### Combining Incentive Programs and Enforcement

- C It's important to follow compliance incentive opportunities with enforcement. Industry should be left with a choice to either do an audit or be inspected.
- C Recipients of compliance incentive letters may not like being contacted by the government, but such it's preferable to be warned that you may be the focus of followup enforcement if you do not comply than to have no notice.
- C It's important that parties who self-disclose "see benefits from doing so" and believe that they are better off because they disclosed. Therefore, there must be followup enforcement against violators who did not disclose violations.
- C It was suggested that a big concern with the audit policy is the recapture of economic benefit because it is unclear how profits will be reviewed and how the Agency will interpret economic benefit when there is no permit.

#### Upfront Discussions with CEOs

- C EPA raised the idea of meeting with trade associations and senior managers at major corporations when EPA believes there may be widespread noncompliance in a particular industry sector but is not far along in the investigation process.
- C Some representatives indicated that companies would prefer that EPA approach CEOs before they receive an enforcement action.

#### Incentives for New Environmental Technologies

- C EPA should introduce incentives for new environmental technologies because the technology industry is becoming weak.

### **IV. WEST COAST CONFERENCE**

#### **A. HIGHLIGHTS OF COMMENTS FROM PLENARY ROUNDTABLE**

The following are highlights of comments provided during the plenary roundtable discussion at the west coast conference. These highlights are presented **using the words of the plenary roundtable participants**, and under headings which reflect the focus of

their comment(s) and the discussion.

### Toolbox

- C What's needed in the tool kit is the ability to go to one place to get information
- C Small businesses don't intentionally violate the law. Most of us just want to do what's right. The rules keep changing and it's hard to keep up. EPA needs to clean up its tool box by working with state and local agencies who have different requirements. EPA could do more outreach and education.
- C Small businesses, particularly new ones, need basic information on the environmental statutes with which they need to comply. Many don't know where to go for help or are even aware that they need to look for these requirements.
- C Tools for going "beyond compliance" are missing. Companies need incentives and recognition to go beyond compliance. There should be incentives for documented risk reduction.
- C Notices of Violations (NOVs) could be used as a tool to provide education as well as compliance.
- C Also, publicizing and grading good and bad players could be a compliance incentive. It would enhance public awareness and apply "embarrassment" pressure.
- C Compliance assistance centers serve as an educational facility and need to be promoted.
- C Strong enforcement is important, but the goal post needs to stay in the same place.
- C The voluntary Audit Policy is a fine tool that can be tailored to particular industries.
- C EPA needs a bigger hammer in its tool kit and should develop a "three strikes you're out" policy (i.e., three events of significant non-compliance (SNC) and you lose your contract or your permit). A point system could be devised similar to the California driving law. Environmental violations are crimes and need to be enforced.
- C Enforcement activities need focus in order to have measurable environmental outcomes. In the water area, for example, a focus could be created around

TMDLs and non-point sources.

- C Tribes need a tool box to help get an infrastructure in place and help design programs in a multi-media way.

#### Moving Beyond Compliance

- C Companies need incentives and recognition to go beyond compliance. There should be incentives for documented risk reduction.

#### Rules and Regulations

- C There is much variation in the interpretation of regulations in different EPA regions and in different states. Uniformity needs to be imposed on the interpretation of regulations.
- C EPA's role is not that of providing small business one-on-one assistance. Small businesses assistance centers are in every state. Business sees EPA as the enforcer. The biggest area where EPA can make a difference is in being proactive, coming out of the "ivory tower" in Washington, D.C., and getting business to participate in the regulatory process. They aren't plugged into the process or know enough in advance about what's happening. EPA needs to start with the rulemaking and policy process and plug people in. Communities should be included, too.

#### Codification of Compliance Incentive Programs

- C I applaud the Audit Policy and the sector compliance policies. However, the proliferation of incentive programs makes it difficult to know what's enforceable. This creates confusion. EPA needs to review results and codify its guidance. This would help achieve consistency and clarify the federal/state partnership.

#### Environmental Education

- C Environmental education should be included in the curriculum for technical/vocational schools.

#### Federal Violations

- C Some of the worst environmental offenders are federal/state government entities (DOD, schools). This should be a focus for EPA.

#### Involving Communities and Community Groups

- C Citizens must have a strong voice; regulators need to do better at including them in the dialogue.
- C Communities are impacted by small businesses and the cumulative impact is not measured. EPA needs to get a handle on this, especially on minor sources. Communities can provide an important link and important information.
- C Community groups/neighbors of small businesses are better received than regulators. They can get a grip on the true nature of the problems.
- C EPA needs to engage communities. For example, you could conceptualize a group of "environmental watchers" similar to "weather watchers" to help provide information - it doesn't have to be high tech. Also, EPA could foster community environmental leadership programs.

#### Model Programs

- C EPA doesn't have enough resources to enforce or do compliance assistance. They need to work with states and municipalities to develop model programs.
- C EPA can't determine whether facilities are in compliance so they can't help small businesses comply. EPA should develop model programs, that's a better way to provide compliance assistance. EPA should train states and large municipalities. An example is in the stormwater program where local government does site visits to all significant sources, providing technical assistance.

#### Base Line Expectations for Compliance

- C Small businesses need to know what the base line expectations are for compliance. The goal post keeps changing.

#### Base Level Enforcement

- C I was startled by the high non-compliance rates. If there's 50% non-compliance in any program, the program is flawed. The focus needs to be more on base level enforcement. EPA needs to be more aggressive with states and with direct enforcement.
- C EPA need to have stronger oversight of state programs as long as they don't take the "flavor of the month" approach. A unifying focus of environmental outcomes is needed.

### **B. HIGHLIGHTS FROM COMPLIANCE ASSISTANCE SESSIONS**

The following are highlights of comments provided during the first and second compliance assistance sessions at the west coast conference.

#### Delivery of Compliance Assistance

- C EPA should develop a long-term, fundamental process to inform industry of the specific requirements that are applicable to each type of industry and do more to publicize this process. EPA needs to develop a consistent program across the U.S. to provide compliance assistance to small businesses.
- C Tools must get to the users if they are have their intended impact.
- C EPA should develop a wider distribution mechanism for compliance assistance information and use trade associations, suppliers to small businesses, and insurance companies, in addition to using the compliance assistance centers.
- C EPA should consider non traditional distribution points that small businesses visit (e.g. EPA might want to use banks to distribute check lists of environmental requirements when small businesses seek loans).
- C EPA should motivate trade schools to include environmental training in their curriculum.

#### Identification of Needs of Small Businesses

- C EPA should visit small businesses to learn what they need.

#### Content and Format of Compliance Assistance Materials

- C The information provided to small businesses must be practical and user friendly and the focus must be on telling small businesses what they need to do to comply.
- C We need to provide user-friendly software with drop-down menus which explain the many different regulations that pertain to specific industries. At the same time, EPA needs to recognize that not everyone has access to the Internet.
- C EPA needs to better define why non-compliance exists, before providing compliance assistance.
- C Companies need to know the “tree” of regulations that apply to them and how the various federal and state regulations relate, overlap or conflict.

#### Time Frames for Compliance Assistance

- C EPA needs to be realistic with regard to the time frames that it sets for small businesses to fully comply. We need to provide small businesses with adequate lead time to comply and with compliance assistance, prior to pursuing enforcement.

### Rules

- C EPA should get states and small businesses/trade associations involved early in the rule making process.
- C EPA should review existing rules and look for opportunities to remove unnecessary regulations.

### Roles of EPA, States and Locals

- C EPA should provide resources to states and local agencies to be the first line of compliance assistance. EPA should work through state agencies (e.g. state small business associations) and Local programs (e.g. local inspectors) to deliver compliance assistance. Local programs are in the best position to work with the community. Many “mom and pop” facilities will not call EPA or the state, or take the time to use the Internet.
- C Local compliance assistance programs based on partnerships (with industry, regulatory agencies, and trade associations) are effective.
- C EPA should play a leadership role in developing common sense strategies and rules in plain English, and provide clear information on what businesses need to do to comply, industry by industry.
- C EPA needs to provide consistent funding and support towards the compliance assistance program.

### Measuring Effectiveness of Compliance Assistance

- C EPA, states, and locals need to develop meaningful ways to measure the effectiveness of compliance assistance and then demonstrate to the public and elected officials that compliance assistance will result in higher compliance rates.
- C EPA needs to disseminate to the public more positive information on the progress that has been made toward environmental improvements.

### Enforcement and Publicity

- C We must provide companies an incentive to follow the compliance assistance that they receive by enforcing violations and publishing the results.
- C When new rules are promulgated, EPA needs to offer assistance and allow a reasonable time frame for results, but then use the “enforcement hammer” in a consistent manner if the regulated community does not respond.
- C It’s frustrating for companies who spend funds to ensure their compliance to watch neighboring companies who are not in compliance and who are not subject to enforcement actions.

#### Industry Mentors

- C EPA should work with “opinion leaders” in industry as mentors to convince individual facilities to adopt pollution prevention practices.

#### Compliance Assistance on Tribal Lands

- C On tribal lands, most businesses are very small and have little contact with EPA. EPA’s compliance assistance program is not adequately reaching the tribes. Tribes are reaching out, but are not included in the compliance assistance network.
- C EPA should provide conferences, workshops, and manuals available at the tribal level.

### **C. HIGHLIGHTS FROM COMPLIANCE INCENTIVE SESSIONS**

The following are highlights of comments provided during the first and second compliance incentive sessions during the west coast conference.

#### Rewards, Recognition or Other Special Treatment for Top Performers

- C Many of the participants (academics, states, practitioners, environmental groups) expressed concerns about EPA developing “top performer programs” given the scarce resources available and other more pressing problems such as high levels of noncompliance.
- C It was suggested that EPA make better use of state and local top performer



programs before starting more of their own. Others noted that a top performer program might be overly duplicative of other federal programs already in existence, such as Project XL.

- C Some industry representatives indicated that top performer programs are important from the standpoint of helping company employees push for improved environmental performance by enabling them to show some return on their investment.

#### Definition of Top Performer

- C Numerous participants noted that “compliance should be the floor,” but that any top performer program should also look at a company’s environmental performance and total environmental impact.
- C Others stated that a full compliance requirement would be difficult for small businesses, many of whom do not know when they are in noncompliance.
- C EPA should view top performance as a “continuum,” with more focus on top performing systems and less focus on individual performers.
- C It was suggested that “continuous environmental improvement” be a component of the definition so that companies receive some benefit from investing in technology that results in improved performance.
- C Accountability should be another component of any top performer program.
- C It’s important to solicit and use the input of impacted communities in designing any top performer program.
- C EPA should focus on innovative programs which have the potential to solve problems for other facilities in the same sector.
- C Reduction of risk is a legitimate entrance criteria for a top performer program, as well as a goal.
- C Some participants identified existing programs to examine, including Western Dairymen Association Program, EnviroStars in Seattle, and P2O in Portland.
- C EPA should also define when a company should be removed from a top performer program.

#### Incentives for Top Performers

- C The most frequently mentioned incentive was public recognition. Several indicated that positive public recognition greatly benefits companies while costing the Agency relatively little.
- C Others noted that the most effective incentives positively impact a company's "bottom line."
- C Some participants stated that EPA should allow top performers to gauge their own state of compliance while focusing government resources on others who do not have the same performance record.

#### EPA's Audit/Self-Policing Policy

- C Some areas of potential improvements in EPA's Audit/Self-Policing Policy were noted by conference participants. These areas included the following:
  - earlier public access to information on disclosures and the opportunity for environmental and community groups to influence outcomes under the audit policy;
  - better coordination with the states;
  - more expeditious processing of disclosures made under the Policy;
  - better consistency in interpretation by the EPA and the Department of Justice;
  - additional language in the policy on pollution prevention;
  - assistance in conducting audits;
  - mitigation of the economic benefit portion of the penalty; and
  - greater protection of the information disclosed by a company.
- C EPA was commended for soliciting feedback on the policy.

#### Influences and Motivators to Influence Compliance and Overall Environmental Performance

- C Participants emphasized the "power of publicity," noting that desire to avoid negative publicity was a strong motivator for companies. Participants also encouraged EPA to recognize positive environmental performance at the same time that EPA highlights violators.
- C Some of the actions suggested for government to motivate compliance included the following:
  - Obtain more local and national press coverage of concluded enforcement cases;
  - Initiate a dialogue on citizen suit enforcement and help protect

- the ability to file citizen suits;
- Increased use of citizen monitoring;
- Strengthening partnerships with the states and the regulated community;
- Adopt a “three strikes and you’re out” approach whereby a company with three instances of significant noncompliance would be barred from government contracts;
- Use the discovery process more effectively to determine if corporate officials know the law and the state of environmental compliance by their company;
- Increase resources devoted to enforcement; and
- Reward states with high levels of compliance.

#### **D. HIGHLIGHTS FROM INFORMATION AND ACCOUNTABILITY SESSIONS**

The following are highlights of comments provided during the sessions on information and accountability during the west coast conference.

##### Data Quality

- C QA/QC on data from external sources (the regulated community, state and local agencies) needs improvement.
- C The primary needs of quality assurance are to ensure:
  - accuracy;
  - completeness;
  - timeliness; and
  - context.
- C Commonly agreed-upon principles of data quality are needed. EPA could take a leadership role in this area.
- C Information must be provided in context. For example, information on ambient concentrations on air and water must also include health impacts or else there’s no frame of reference.

##### Importance of Data Context for Disproportionately Exposed Populations

- C Tribal representatives emphasized the importance of data context for tribes. Fish and shellfish consumption within the tribal populations utilize local resources from 10 to 100 times more than the general population. The tribes have no way of measuring risks and cannot tell the tribal population where they can select fish or

what's safe. The tribes are looking for compatible methodologies so that they can make assessments and gain a better understanding of what's going on in the system.

- C Tribes need equipment and staff to compile reliable data. Determining a methodology for consumption levels of people is not considered in the mainstream population but has a significant impact on tribal populations. When regulatory authorities are developing new methodologies, the tribes must be included.
- C Data analyses often fail to provide a multi-cultural perspective. Disproportionately exposed or at-risk populations often need to know the compliance history of companies and the exposure pathways of their chemicals. Environmental justice communities need accurate, accessible and timely information.
- C There is a difference between sharing information and having usable information.

#### Presentation of Data to the Public

- C The public should have access to raw data. However, some kind of context should accompany it so the public can make sense of the data.
- C For right-to-know information, the target audience is the general public, who needs specific, geographical information which is user friendly.

#### Current Data Systems

- C EPA must make data bases uniform so that they can be used from place to place.
- C EPA needs to be aware that a reliable data base is increasingly important to the business community. The focal issue in the acquisition of a company is its compliance history. Access to this data is critical. The business community needs accurate, uniform data just like one would need in a title search. A uniform data base is needed.

#### Future Development of Data Systems

- C EPA should be providing linkages to state systems rather than developing data bases itself.
- C Before other data systems are developed, there is a need to talk with impacted stakeholders to discuss questions such as:
  - What are the key data we need to collect?
  - What are the priorities for data collection?

- How can we make the data user friendly?
- How will stakeholders obtain information from the data system?

#### Need for Baseline Measurement

- C There is a need for a baseline measurement of the environment.
- C The most vested stakeholder is the community. Community knowledge should be utilized in developing a baseline measurement.

### **E. HIGHLIGHTS FROM SESSIONS ON INNOVATIVE ENFORCEMENT APPROACHES**

The following are highlights of comments provided during the west coast sessions on innovative approaches to enforcement.

#### Use of Compliance Assistance in Follow-up to Enforcement

- C Once a problem area in a sector is identified and enforcement actions taken, EPA should still provide compliance assistance to smaller facilities in the same sector to avoid future problems.

#### Determining EPA's Involvement in Cases

- C With regard to state enforcement cases, there needs to be a decision as to the types of cases in which EPA's involvement is beneficial and the cases in which it is a detriment.

#### Supplemental Environmental Projects (SEPs)

- C SEPs should be used to encouraging mentoring, where companies with a positive compliance record can lend their assistance to small companies with compliance issues.
- C Tribes depend on natural resources for cultural, religious and economic use. When there is natural resource damage, tribes lose the economic benefit but this damage assessment is not accounted for in the penalty assessment. EPA should work on passing source recovery back to the tribes.

#### Factors Influencing Innovative Enforcement Projects

- C Overall success of innovative enforcement projects is dependent on showing industry the economic benefit to them of innovative compliance, waste reduction,

reduction in resource use, pollution prevention, and similar approaches.

#### Citizen Suit Provisions

- C Citizen suit provisions could be expanded to allow appearances before agencies without bearing costs.
- C Citizen suits are a way for EPA to leverage resources to have citizens enforcing the laws. EPA should develop programs and tools (e.g. communication networks, technical support, etc) to facilitate enforcement by citizen groups.

#### Complexity of Regulations

- C There are two types of ambiguities and complexities in regulations -- unintentional and intentional. EPA should identify and address unintentional ambiguities in the regulations through rule making or guidance. For intentional ambiguities, EPA needs a clear mechanism or process to provide answers to questions; otherwise, the Agency should assume that problems will occur.

#### Hotline

- C If a citizen believes there is an environmental violation occurring within the community, there should be a well publicized number that the citizen can use to report the violation.

#### Demands on States and Limited Resources

- C There needs to be recognition that, despite the differing needs and requests for compliance assistance, inspections, special programs, and enforcement, small state programs are like small businesses and have limited resources. Many small states focus on inspections and administrative enforcement due to limited resources.

#### Heads-Up Letters

- C Non-compliance can be reduced by sending heads-up letters to potential violators essentially forewarning them that, "This is your last chance to comply without being subjected to an enforcement action."

#### Small Businesses' Impact on Environment

- C Review of business license data bases and OSHA data bases can provide a clearer picture of the potential impact from emissions by small businesses.

### Timing of Compliance Assistance, Incentives and Enforcement

- C Compliance assistance should occur prior to the compliance deadline for a regulation or when a new business comes on line. Compliance incentive programs are dollars well spent because the majority of businesses want to do the right thing. Enforcement should be reserved for recalcitrant behavior and should not be used for minor violations.

### Capacity Building at Local Level

- C There is a misconception in Congress that EPA is the primary implementor and enforcer of environmental regulations when, in reality, local agencies are actually on the front line conducting enforcement activities. EPA needs to work on capacity building at the local level.

### Incorporate Input from State Inspectors in Future Directions

- C There are few federal inspectors and a large number of state inspectors who work the front lines interfacing with the regulated community. EPA should receive input from the state inspectors when deciding upon future directions.